FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR
Second Appeal No.529/2004
(Dashrath Udhao Nande Vs. Madhav Bhagwanji Yeskar)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Anjan De, Adv. for the appellant.
Mr. N.A. Lapalikar, Adv. for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 25th July, 2007.

Heard the learned counsel for the parties.

The appellant has challenged the judgment passed by the 6th Ad hoc Additional District Judge, Chandrapur, on 19/6/2004 whereby the judgment passed by the trial Court was reversed and the appeal filed by the respondent was allowed.

The appellant is the original defendant. A suit was filed by the plaintiff for permanent injunction restraining the defendant from obstructing the plaintiff from effecting necessary repairs to the water pipe line which was shown in the sketch map by letter ABCD, in any manner. According to the plaintiff, the water pipe line of the plaintiff was connected to the main water line of the Nagar Parishad. The said pipe line was an underground pipe line and was passing through an open galli. The plaintiff got regular water supply from the pipe line till October, 1991. However, the defendant took possession of the open land/galli and

carried out some cement construction and flooring over the same. The water pipe line of the plaintiff was damaged as a result of the construction and needed repairs. The Municipal Council issued notice to the plaintiff to carry out repairs. The plaintiff engaged a plumber to carry out the repairs, but the defendant did not permit the plaintiff to enter into the land which was illegally occupied by the defendant. In view of the aforesaid position and the failure on the part of the plaintiff to get the pipe line repaired, the Municipal Council disconnected the water supply to the plaintiff on the plea that no repairs had been effected by the plaintiff. The plaintiff, therefore, sought the aforesaid injunction.

The claim of the plaintiff was denied by the defendant. The defendant denied that he had obstructed the plumber engaged by the plaintiff to carry out the repairs. According to the defendant, the Municipal Council had disconnected the water supply to the house of the plaintiff and, therefore, the Municipal Council was a necessary party to the litigation. The defendant then denied that he had encroached upon the open land/galli and obstructed the plaintiff from repairing his pipe line. The defendant lastly pleaded that there was another way from which the pipe line could be taken by the plaintiff and if the plaintiff was permitted to continue with the old pipe line through the plot of the defendant, it would cause

great damage to the defendant. The defendant, therefore, prayed for the dismissal of the suit.

The trial Court, after considering the evidence tendered by the parties on record, held that the plaintiff had proved the existence of the water connection, but had failed to prove that the defendant encroached upon the disputed land in an illegal manner. The Court further observed that the plaintiff failed to prove that the defendant failed to give assistance to the plaintiff for repairing pipe line. It was also held by the trial Court that the suit was barred by limitation. Consequently, the trial Court refused to grant injunction in favour of the plaintiff.

In an appeal carried by the plaintiff to the first appellate Court, the first appellate Court by a judgment dated 19/6/2004, allowed the appeal and the judgment passed by the trial Court was set aside. The defendant was restrained from obstructing the plaintiff from carrying out the repairs to the water pipe line passing through the plot which was then in possession of the defendant. The appellate Court held that the Municipal Council, Chandrapur was not a necessary party to the suit as the plaintiff had not claimed any relief whatsoever against the Municipal Council. According to the appellate Court, the defendant did not allow the plaintiff to carry out the necessary repairs to the pipe line and the water supply to the plaintiff's house was disconnected because the

plaintiff did not repair the water pipe line. The plaintiff was, therefore, aggrieved by the action of the defendant who did not permit the plaintiff to repair the water pipe line which resulted in the disconnection. The appellate Court then held that the plaintiff had proved that the defendant had obstructed the plaintiff from carrying out repairs to the water pipe line which resulted in the disconnection of the water supply to the house of the plaintiff. On an appreciation of the material evidence on record, the appellate Court further held that the defendant had no right whatsoever to obstruct the plaintiff from carrying out repairs to the pipe line. The Court held that the defendant was an encroacher on the Government land and had no right to restrain the plaintiff from carrying out the repairs to his pipe line.

The findings recorded by the appellate Court are pure findings of facts which do not give rise to a substantial question of law. The findings are recorded by properly appreciating the material evidence on record. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP